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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

ADIS SOLTANIAN,

Defendant and Appellant.

B217886

(Los Angeles County  
Super. Ct. No. MA045865)

APPEAL from the judgment of the Superior Court of Los Angeles County,  
Thomas R. White, Judge. Affirmed.

Sharon Fleming, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Susan D.  
Martyne and Analee J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.

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## **INTRODUCTION**

Defendant Adis Soltanian appeals from the judgment entered following his plea of no contest to custodial possession of a weapon (Pen. Code,<sup>1</sup> § 4502, subd. (a)). The plea followed the denial of his suppression motion. On appeal, defendant challenges the imposition of a \$400 restitution fine. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Defendant was charged by felony complaint in June 2009 with one count of custodial possession of a weapon, with special allegations he had previously served two separate prison terms for felony convictions within the meaning of section 667.5, subdivision (b). According to the preliminary hearing transcript, in March 2009, defendant admitted to state prison correctional officers that a piece of sharpened Plexiglas found inside a mattress in March 2009 belonged to him.

On July 16, 2009, defendant, represented by counsel, agreed to enter a plea of no contest to custodial possession of a weapon. Pursuant to the negotiated plea, the special allegations were to be dismissed, and defendant would be sentenced to the low term of two years in state prison, consecutive to the term he was currently serving.

The record of the plea hearing establishes defendant was advised of and waived his constitutional rights and was advised of, and acknowledged he understood, the consequences of his plea. Defendant stated he understood the consequences of his plea and believed it was in his best interests to accept the plea agreement.

Defense counsel stipulated to a factual basis based on the police reports. The trial court found the plea was freely and voluntarily entered, and there was a factual basis for the plea.

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<sup>1</sup> All further statutory references are to the Penal Code.

The trial court sentenced defendant immediately after the plea to a two-year state prison term and ordered him to pay a \$20 security fee, a \$30 court construction fee and a \$400 restitution fine under section 1202.4, subdivision (b). The court also imposed and suspended a \$400 parole revocation fine pursuant to section 1202.45. The special allegations were dismissed.

## DISCUSSION

In approving the proposed plea agreement, the trial court told defendant that apart from the agreed-upon state prison sentence, the court would impose the “standard terms, fines, [and] conditions.” Just prior to entering his plea, defendant was advised by the court that as a consequence of his plea, he would be subject to “the minimum victims restitution fund fine and parole revocation fee pursuant to [section] 1202.4[, subdivision] (b), as well as the \$30 court construction fee.” Defendant replied that he understood.

Defendant contends the \$400 restitution fine must be reduced to \$200. Relying on *People v. Walker* (1991) 54 Cal.3d 1013, 1022-1030, defendant argues (1) the trial court’s clear intention was to impose the statutory minimum, which it mistakenly believed was \$400; and (2) the \$400 fine was a “significant deviation” from defendant’s anticipated punishment, the \$200 fine he understood was a consequence of his plea. We disagree.

Where parties enter into a plea bargain, they must adhere to the terms of the agreement. (*People v. Panizzon* (1996) 13 Cal.4th 68, 80; *People v. Walker, supra*, 54 Cal.3d at p. 1020.) The punishment imposed on the defendant must not exceed that upon which the parties agreed. (*Walker, supra*, at p. 1024.) A punishment “significantly greater than that bargained for violates the plea bargain.” (*Id.* at p. 1027.) Our determination whether a punishment is “significant” is made “in the context of the [plea] bargain as a whole.” (*Id.* at pp. 1027-1028, fn. 3.) As stated in *Walker, supra*, at page 1028, footnote 3, the test for significance is that set forth in *Santobello v. New York* (1971) 404 U.S. 257 [92 S.Ct. 495, 30 L.Ed.2d 427]: “[W]hen a plea rests in any

significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.” (*Santobello*, *supra*, at p. 262.)

Here, it is clear that defendant’s plea did not rest in any significant degree on the imposition of a restitution fine of \$200 only. Rather, it rested on the imposition of the low term and dismissal of the prior prison term allegations.<sup>2</sup> The specific amount of the restitution fine was not discussed.

Moreover, the difference between the minimum restitution fine that must be imposed under subdivision (b)(1) of section 1202.4, \$200, and that which could be imposed under subdivision (b)(2) of that section, \$200 for each year of imprisonment imposed or \$400, is not significant in the context of the plea bargain in this case. It follows that defendant is not entitled to a reduction of the restitution fine or the opportunity to withdraw his plea. (*People v. Walker*, *supra*, 54 Cal.3d at pp. 1027-1028, fn. 3.)<sup>3</sup>

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<sup>2</sup> In fact, defendant’s notice of appeal set forth as its basis only the denial of his suppression motion. The amount of the restitution fine was not raised as an issue.

<sup>3</sup> In *Walker*, the court held the then statutory minimum \$100 restitution fine was not significant as a matter of law. (*People v. Walker*, *supra*, 54 Cal.3d at pp. 1027-1028, fn. 3.) The \$5,000 restitution fine imposed, however, “was a significant deviation” from the terms of the plea bargain. (*Id.* at p. 1029.) The \$200 difference between the minimum restitution fine under section 1202.4, subdivision (b)(1), and the \$400 imposed here was far closer to the amount deemed not significant as a matter of law in *Walker* than it was to the amount deemed significant.

## **DISPOSITION**

The judgment is affirmed.

JACKSON, J.

We concur:

PERLUSS, P. J.

ZELON, J.